

REMARKS

This responds to the Office Action dated February 15, 2006, and the references cited therewith.

No claims are amended, canceled, or added; as a result, claims 1-46 remain pending in this application.

§103 Rejection of the Claims

Claims 1-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kraus et al. (U.S. Patent No. 6,804,559).

Applicant respectfully traverses the rejection and submits that *prima facie* obviousness has not been established. In particular, the Office Action does not appear to set forth a teaching or suggestion of all elements recited in the claims and the Office Action does not appear to set forth the requisite motivation supporting the proposed modification or combination.

For example, the Office Action appears silent as to a teaching or suggestion, in Kraus, of a duty cycle as recited in claim 1. In addition, Applicant is unable to find, in Kraus, such a teaching or suggestion. The Office Action assertion regarding inductive coupling does not appear to cure this shortcoming. For this and other reasons, Applicant submits that the proposed combination of Kraus and the knowledge of one of skill in the art at the time of the invention, does not teach or suggest all recited elements.

In addition, Applicant submits that the Office Action appears silent as to the requisite motivation or suggestion in support of the proposed modification or combination. As to independent claim 1 (and dependent claim 37), the Office Action asserts that "... one of ordinary skill in the art would have found it obvious to inductively couple the close-range antenna 47 because inductive field antennae are easy to manufacture and inexpensive and offer limited field strength." This assertion of the Office Action does not appear to provide a basis or cogent reasoning in support of the selection of Kraus for modification in a manner that would lead to the claimed subject matter.

As to independent claim 17, Applicant is unable to find, in Kraus along with the knowledge of one of skill in the art, a teaching or suggestion of all elements recited in the claim. For example, Applicant is unable find a teaching or suggestion regarding programming the

device to select one or more of the plurality of wireless transmitters for transmitting an outbound signal, as recited in claim 17. The Office Action discussion regarding “modulation programming” appears to be unsupported in the cited document and does not appear to meet the instant claim language. Additionally, the record appears silent as to a suggestion or motivation for modification or combination in the manner proposed.

As to independent claim 29, Applicant is unable to find, in the Office Action, a factual basis for the rejection. Notification of allowance is respectfully requested.

As to independent claim 36, Applicant is unable to find, in the proposed combination, a teaching or suggestion of all recited elements. For example, Applicant is unable to find a teaching or suggestion of opening a channel to communicate using a wireless far field link, receiving data on the channel, and closing the channel after a predetermined period, as recited in the claim. The Office Action states “one of ordinary skill in the art would have found it obvious to store data in memory in the implanted device and operate the device based on the memory because the pacemaker would not be proximate to a programmable source for extended periods of time when the patient is mobile.” Such a statement does not provide a basis or cogent reasoning in support of the requisite motivation or suggestion for modifying or combining as proposed. In addition, such a statement does not cure the shortcomings of the rejection as to teaching or suggesting all recited elements. Reconsideration and allowance is respectfully requested.

As to independent claim 41, Applicant submits that the record does not appear to teach or suggest all recited elements. For example, Applicant is unable to find a teaching or suggestion of powering a far field receiver of the device according to a duty cycle and powering a far field transmitter of the device after having received a far field key signal using the far field receiver during a time when the far field receiver is powered, as recited in the claim. The Office Action states “one of ordinary skill in the art would have found it obvious to power the far field antenna 49 after receiving a far field key signal because starting a test requires similar antenna initiation as powering a transmitter.” Applicant respectfully submits that the Office Action discussion regarding “starting a test” appears to be unsupported in the cited document and does not meet the instant claim language. Furthermore, the Office Action assertion does not provide a basis or cogent reasoning in support of the requisite motivation or suggestion for modifying or combining

as proposed. In addition, such a statement does not cure the shortcomings of the rejection as to teaching or suggesting all recited elements. Reconsideration and allowance is respectfully requested.

As to dependent claims 2-16, 18-28, 30-35, 37-40, and 42-46, each recites additional elements beyond that of the independent claims from which each depends. It is believed that the independent claims are in condition for allowance, and accordingly, Applicant respectfully submits that the dependent claims are also in condition for allowance. Furthermore, as to dependent claims 2, 8-12, 14-16, 22, 30-35, 38-40, 42 and 46, Applicant finds no detailed action describing the legal or factual basis for the rejection. Applicant respectfully submits that the pending claims are in condition for allowance and notification to that effect is respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6911 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JEFFREY A. VON ARX ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

(612) 373-6911

Date

May 15, 2006

By



David W. Black

Reg. No. 42,331

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15 day of May, 2006.

Name

John D. Gustav-Wrathell

Signature

